

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 VICTOR TAGLE,

Case No. 2:18-cv-01031-GMN-VCF

4 Plaintiff

ORDER

5 v.

6 CORRECTIONS CORPORATION
AMERICA et al.,

7 Defendants

8
9 **I. DISCUSSION**

10 This is a “tort action” filed by a *pro se* prisoner in the custody of the Nevada
11 Department of Corrections (“NDOC”) who is being housed at a private prison in Eloy,
12 Arizona. On December 26, 2018, this Court issued an order denying Plaintiff’s application
13 to proceed *in forma pauperis* because Plaintiff had “three strikes” pursuant to 28 U.S.C.
14 § 1915(g). (ECF No. 4). The Court informed Plaintiff that if he did not pay the \$400.00
15 filing fee in full within 30 days from the date of that order, the Court would dismiss the
16 action without prejudice. (*Id.*) The 30-day period has now expired and Plaintiff has not
17 paid the full filing fee of \$400.00.

18 **A. Motion for Reconsideration**

19 Plaintiff filed a motion for reconsideration. (See ECF No. 6). A motion to
20 reconsider must set forth “some valid reason why the court should reconsider its prior
21 decision” and set “forth facts or law of a strongly convincing nature to persuade the court
22 to reverse its prior decision.” *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D.
23 Nev. 2003). Reconsideration is appropriate if this Court “(1) is presented with newly
24 discovered evidence, (2) committed clear error or the initial decision was manifestly
25 unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J v.*
26 *Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is not an
27 avenue to re-litigate the same issues and arguments upon which the court already has
28 ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005). The

1 Court denies this motion because it finds that it did not commit clear error in its initial
2 decision.

3 **B. Dismissal**

4 District courts have the inherent power to control their dockets and “[i]n the
5 exercise of that power, they may impose sanctions including, where appropriate . . .
6 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
7 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure
8 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
9 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
10 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
11 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
12 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
13 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
14 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
15 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
16 failure to comply with local rules).

17 In determining whether to dismiss an action for lack of prosecution, failure to obey
18 a court order, or failure to comply with local rules, the court must consider several factors:
19 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
20 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
21 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
22 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
23 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

24 In the instant case, the Court finds that the first two factors, the public’s interest in
25 expeditiously resolving this litigation and the Court’s interest in managing the docket,
26 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
27 in favor of dismissal, since a presumption of injury arises from the occurrence of

1 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
2 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
3 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
4 of dismissal discussed herein. Finally, a court’s warning to a party that his failure to obey
5 the court’s order will result in dismissal satisfies the “consideration of alternatives”
6 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
7 F.2d at 1424. The Court’s order requiring Plaintiff to pay the full filing fee within 30 days
8 expressly stated: “It is further ordered that this action will be dismissed without prejudice
9 unless Plaintiff pays the \$400.00 filing fee in full within thirty (30) days from the date of
10 this order.” (ECF No. 4). Thus, Plaintiff had adequate warning that dismissal would result
11 from his noncompliance with the Court’s order to pay the full filing fee within 30 days.


12 **II. CONCLUSION**

13 It is therefore ordered that this action is dismissed without prejudice based on
14 Plaintiff’s failure to pay the \$400.00 filing fee in compliance with this Court’s December
15 26, 2018, order.

16 It is further ordered that the motion for reconsideration (ECF No. 6) is denied.

17 It is further ordered that the Clerk of Court close the case and enter judgment
18 accordingly.

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20 DATED THIS 5 day of February 2019.

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24 Gloria M. Navarro, Chief Judge
25 United States District Court
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